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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 DEANDRE GRIFFIN,

12 Plaintiff,

13 v.

14 CALIFORNIA DEPARTMENT
15 OF CORRECTIONS AND
16 REHABILITATION, *et al.*,

17 Defendants.
18

) Case No. CV 11-3458 DOC (JCG)

) **ORDER ACCEPTING REPORT AND**
) **RECOMMENDATION OF UNITED**
) **STATES MAGISTRATE JUDGE**

19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended
20 Complaint, the Magistrate Judge's Report and Recommendation, Petitioner's
21 Objections to the Report and Recommendation, and the remaining record, and has
22 made a *de novo* determination.

23 Nothing in the Objections refutes the Magistrate Judge's finding that
24 Plaintiff waited approximately one year and eight months after the alleged incident
25 to submit an inmate grievance. (*See* R&R at 4.) Additionally, Plaintiff now
26 acknowledges that the "Appeals Coordinator" never actually told him that he had
27 "no available administrative remedies." (*Obj.* at 3-4; *see also* R&R at 3-4.) Under
28 such circumstances, Plaintiff failed to *properly* exhaust his Eighth Amendment

1 claim, as required by the Prison Litigation Reform Act. *See Woodford v. Ngo*, 548
2 U.S. 81, 93 (2006) (“[T]he PLRA exhaustion requirement requires proper
3 exhaustion.”).¹

4 Accordingly, IT IS ORDERED THAT:

- 5 1. The Report and Recommendation is approved and accepted;
- 6 2. Judgment be entered dismissing this action without prejudice; and
- 7 3. The Clerk serve copies of this Order and the Judgment on the parties.

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10 DATED: August 24, 2012



HON. DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

25 ¹ Petitioner also filed, concurrently with his Objections, a “Response to
26 Defendant CDCR’s Reply” and a “Motion and Prayer to the U.S. District Judge to
27 Intervene in 42 U.S.C. [§] 1983 Civil Rights Complaint.” [See Docket Nos. 52-53.]
28 Nothing in those filings changes the Court’s conclusion that Plaintiff has failed to
properly exhaust his administrative remedies.